IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Lajua @ Lajja Ram Vs. State of Rajasthan
(D.B. Criminal Appeal No.473/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 31-1-2002 in Sessions Case No.15/1994 passed by Shri S.N.Derashree, RHJS, Special Judge, Dacoity Affected Area, Dholpur.

Date of Judgment: May 16, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Vivek Goyal, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Lajua @ Lajja Ram, the appellant herein, was put to trial before learned Special Judge, Dacoity Affected Area, Dholpur, who vide judgment dated January 31, 2002 convicted and sentenced the appellant as under:-

U/s.395/396 IPC:

To suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer simple imprisonment for one year.

U/s.398 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer simple imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. As per the prosecution story on December 3, 1993 at 1 AM informant

Madho Singh Thakur (Pw.1) submitted a written report (Ex.P-1) at Police Station Rajakhera to the effect that around 11.30 PM while the informant along with his brother Ram Sanehi was sleeping at the well 10-12 miscreants came to them and forcibly took them to their house. The miscreants opened fire at his father who died on the spot. All the jewelry and cash were taken by the miscreants. The informant could identify Lajjua and Neta. On that report case under section 396 and 397 IPC was registered and investigation commenced. The accused was arrested, necessary memos were drawn, statements of witnesses were recorded and after usual investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge, Dacoity Affected Area Dholpur. Charges under sections 395 and 397 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 17 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant as well as learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Shankar Lal was undeniably homicidal in nature. Vide Post Mortem Report (Ex.P-8) following ante mortem injuries were found on dead body:-

> Wound of entrance ½ x ½ diameter oval shape inverted surrounding area is blackish colour on dorsal aspect of Rt. lower arm.

2. ½ x 1/3 cm oval shape inverted on the Abd. at laterally in lumber region
Wound of exit 2½ x 1cm on the ventral aspect of Rt. lower arm
2. Lacerated wound torn 1 x 1cm each two exit wound everted torn and lacerated blackish colour on the just above iliac crest of left buttock.

In the opinion of Dr. Prithviraj (Pw.9) the cause of death was hemorrhage with massive blood loss in small and large intestine and kidney and shock produced by shot gun to the abd., and its containing.

5. Injured Ram Sanehi (Pw.2) as per injury report (Ex.P-7) received following injuries at the time of incident:-

1. Injury with bleeding with tenderness 1x 1cm on back of Rt. shoulder.
2. Abrasion 3 x 1cm on left thigh laterally
3. Injury with bleeding 2 x 2cm on forehead slightly to left laterally.

6. In his deposition Ram Sanehi stated that one and half year back in the night while he and his brother Madho Singh were sleeping at their tube well about 12 miscreants armed with guns, axes and lathis came over there awoke them. The miscreants who were dressed in Khakis asked to take them to the house and arrange for some food. When Ram Sanehi and his brother did not agree, the miscreants forcibly took them to the house. Amongst miscreants, he could identify Lajja Ram and Neta. Neta gave lathi blow on his foot whereas Lajua inflicted injury with `Butt' of the gun over his right shoulder. They broke open the door of the house and entered the house. One of the miscreants opened fire at his father. They took with them silver and golden ornaments and sum of Rs.15000/-. Testimony of Ram Sanehi could not be shattered in the cross examination and he correctly

identified appellant in the Court. Informant Madho Singh (Pw.1) corroborated the evidence of Ram Sanehi.

7. It is contended by learned counsel for the appellant that evidence of identification of appellant for the first time in the dock at the trial is inherently weak and it could not have been relied upon. We find no merit in this submission. The appellant was not the stranger to the witnesses. They very well knew him prior to the incident. In his cross examination Ram Sanehi deposed thus:-

> लजुआ से हमारी मुलाकात हमारे खेत से इनके खेत लगे होने के कारण जानकारी थी।

Informant Madho Singh (Pw.1) in his cross examination stated as under:-

> पुलिस को मैंने और मेरे भाई राम सनेही ने डकेतों को जिनको हमने पहचान लिया नाम बताए। हम तो उनमें नेता और लजुआ को पहचान गए थे ... हमारे यहां जो लोग इकटठे हुए थे हमने उनको भी बताया था कि डकेतों में लजुआ मुलजिम हाजिर अदालत और नेता जो कि अब एनकाउन्टर में मर चुका है, थे जिनको हमने पहचान लिया था।

8. Identification made by witnesses during trial is primary and substantive evidence in the case and we see no reason to disbelieve the testimony of the witnesses. Ram Sanehi was beaten by the appellant at the time of incident. The appellant was named in the FIR which was promptly made and he was known to the witnesses and his presence on the spot amongst the dacoits has been clearly established by the evidence of Madho Singh and Ram Sanehi. This being the situation the guilt against the appellant is found established beyond reasonable doubt.

9. For these reasons we find no merit in the instant appeal and the same stands accordingly dismissed. Conviction and sentence awarded to appellant under sections 395 read with 396 and 398 IPC are maintained.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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